IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5687 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANAVADAR BANTVA TALUKA CO OP.PURCHASE & SALES UNION LTD.
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 5687 of 2004
MR PS CHAMPANERI for Petitioner No. 1
MR HD DAVE, Ld. AGP for Respondent No. 1-3
NOTICE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 06/07/2004

ORAL JUDGEMENT

Rule. Mr.H.D.Dave, learned AGP waives service of

notice of rule on behalf of the respondents.

2. With the consent of the parties, the matter is taken up for final hearing today. The only question which arises for consideration is to give directions to the authority to hold the election of the petitioner Society which is a specified society within the meaning of Section 74C of the Gujarat Coop. Soceities Act (hereinafter referred to as"the Act").

3. Upon hearing Mr.Champaneri, learned Counsel for the petitioner and Mr.Dave, learned AGP for the respondents, it appears that there is no dispute on the point that the election of specified Societies are required to be held as early as possible and as per the Scheme of the Act the same is required to be completed one month prior to the expiry of the statutory term. It further appears that in the present case, the statutory term has expired on 12-4-2004 and as such prior to the expiry of the statutory term the process of election was initiated. However, on account of the ensuing election of Parliament, the State Government in exercise of power under Section 161 of the Act granted exemption to specified cooperative societies from holding election and as a result thereof, the further process of the election was stayed and the aforesaid position continued upto 30-6-2004. It is the case of the petitioner that pending the aforesaid, the petitioner Society has undertaken the process for preparation of the preliminary voters' list and the proposal is already pending before the authority for holding the election.

4. On behalf of the respondents, as such no extraordinary circumstances are brought to the notice of this Court on the basis of which it can be said that it is not possible to hold the election of the petitioner Society within some reasonable time.

5. It is true that the election was required to be held well in time, but it appears that on account of election of Parliament the election of the society has not been held. It is well settled that it is obligatory on the part of the statutory authority to hold the election well in time so as to enable the voters to have their representative(s) through election by democratic process. Since now no extraordinary circumstances are there on the basis of which it can be said that it is not possible to hold the election, the authority who is enjoined with the duty to hold the election cannot get away from the obligation of holding the election and as up till now the election programme is not published, I

find that it would be just and proper to direct respondent No.3, Direct Collector, Junagadh to hold the election of petitioner Society and complete the election process latest by 15th September, 2004 so that the elected body can assume office prior to 12-10-20004.

6. Under the circumstances, respondent No.3 is directed to initiate the process and complete the election of petitioner society, including the declaration of the result latest by 15th September, 2004 and he shall also take steps to see that the elected body is allowed to assume office latest by 12-10-20004.

7. In view of the aforesaid as election is ordered and as per provisions of Section 74D of the Act the period of six months from the expiry of the statutory terms of three years is not over, the question of appointment of the custodian would not arise.

8. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No costs. Direct service is permitted.

6-7-2004 (Jayant Patel, J.)

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